



July 18, 2002

Mr. Randy Moczygemba
Superintendent
Medina Independent School District
P.O. Box 1470
Medina, Texas 78055-1470

OR2002-3952

Dear Mr. Moczygemba:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 167073.

The Medina Independent School District (the “district”) received a request for information relating to an incident involving the requestor’s child and a coach employed by the district. The requestor states he is only seeking reports that concern his child. You claim that the requested information must be withheld from disclosure under section 21.355 of the Education Code. We have considered your claim and reviewed the submitted information.

The Public Information Act expressly incorporates the provisions of the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g (“FERPA”). Gov’t Code § 552.026. FERPA gives parents the right to inspect the education records of their children. 20 U.S.C. § 1232g(a)(1)(A). Under FERPA, “education records” are those records, files, documents, and other materials which

- (i) contain information directly related to a student; and
- (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

Id. § 1232g(a)(4)(A). The information you seek to withhold consists of “education records” for purposes of FERPA. *See* Open Records Decision No. 462 at 15 (1987). We first note that although you contend that the letter of reprimand and supporting documents you

submitted to this office are made confidential under section 21.355 of the Education Code, these documents constitute "education records" because they contain "information directly related to a student." See 20 U.S.C. § 1232g(b)(1). The requestor, as the student's parent, has a special right of access to the letter of reprimand and the other records relating to the student. See 20 U.S.C. § 1232g(a)(1)(A). Generally, state law is preempted by FERPA to the extent there is a conflict. See, e.g., *Equal Employment Opportunity Comm'n v. City of Orange, Texas*, 905 F. Supp 381, 382 (E.D. Tex. 1995); see also Open Records Decision No. 431 (1985) (FERPA prevails when in conflict with state law). Thus, we determine that the district may not rely on section 21.355 of the Education Code to withhold the requested information and must release the information to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

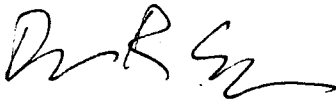
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. R. Saldivar', with a stylized flourish at the end.

David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 167073

Enc: Submitted documents

c: Mr. Jessie Faglie
P.O. Box 900
Medina, Texas 78055
(w/o enclosures)